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Legal Department, DL429
Intellectual Property Administration
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ATTORNEY DOCKET NO. 1094560-3

1641
SPW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Kay Lichtenwalter

Serial No.: 09/895,892

Examiner: 1641

Filing Date: June 29, 2001

Group Art Unit: Christopher L. Chin

Title: DRY BIOCHEMICAL ASSAY PLATE AND METHOD FOR MAKING THE SAME

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria VA 22313-1450

TRANSMITTAL LETTER FOR RESPONSE/AMENDMENT

Sir:

Transmitted herewith is/are the following in the above-identified application:

Response/Amendment Petition to extend time to respond
 New fee as calculated below Supplemental Declaration
 No additional fee (Address envelope to "Mail Stop Amendments")
 Other: (Fee \$ _____)

CLAIMS AS AMENDED BY OTHER THAN A SMALL ENTITY						
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) NUMBER EXTRA	(4) HIGHEST NUMBER PREVIOUSLY PAID FOR	(5) PRESENT EXTRA	(6) RATE	(7) ADDITIONAL FEES
TOTAL CLAIMS		MINUS		= 0	X 50	\$ 0
INDEP. CLAIMS		MINUS		= 0	X 200	\$ 0
<input type="checkbox"/> FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM					+ 360	\$ 0
EXTENSION FEE	1 ST MONTH 120.00 <input type="checkbox"/>	2 ND MONTH 450.00 <input type="checkbox"/>	3 RD MONTH 1020.00 <input type="checkbox"/>	4 TH MONTH 1590.00 <input type="checkbox"/>	OTHER FEES	\$ 0
					TOTAL ADDITIONAL FEE FOR THIS AMENDMENT	\$ 0

Charge \$0 to Deposit Account 50-1078. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 50-1078 pursuant to 37 CFR 1.2 5. Additionally please charge any fees to Deposit Account 50-1078 under 37 CFR 1.16, 1.17, 1.19, 1.20 and 1.21. A duplicate copy of this transmittal letter is enclosed.

Respectfully submitted,

Kay Lichtenwalter

By


Theodore J. Leitereg
Attorney/Agent for Applicant(s)

I hereby certify that this correspondence is being Deposited with the United States Postal Service as First class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

Date of Deposit: January 26, 2005

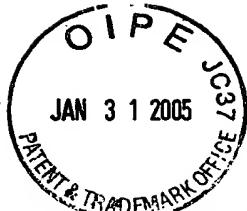
Reg. No. 28,319

Typed Name: Theodore J. Leitereg

Date: January 26, 2005

Signature: 

Telephone No. 650-485-5999



CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450, on January 26, 2005.
Signature Theodore J. Leitereg Date 1/26/05
Name: Theodore J. Leitereg

PATENTS
Attorney Docket No. 1094560-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kay Lichtenwalter

Serial No. 09/895,892

Group Art Unit: 1641

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Examiner: Christopher L. Chin

Title: DRY BIOCHEMICAL ASSAY PLATE AND METHOD FOR
MAKING THE SAME

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Response to Requirement for Election of Species

This paper is responsive to the Requirement for Election of Species in the Office Action dated December 28, 2004, from the U.S. Patent and Trademark Office in the above-identified patent application.

Requirement for Election of Species

The Office Action required under 35 U.S.C. §121 an election of a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Claims 38 and 43-48 were indicated in the Office Action to be generic.

In response thereto Applicant elects the species DNA. The claims readable on this species are Claims 38 and 43-49.

It has been held that a requirement for election of species is tantamount to a restriction requirement. Accordingly, Applicant reserves the right to file divisional patent applications to the species that the Office Action has determined are patentable over one another. See also M.P.E.P. 806.04(h).

Applicant further acknowledges the indication in the Office Action that upon allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species that are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. 1.141.

With respect to the election of species, the requirement for the election indicated that the species were patentably distinct and, thus, the various species, by definition, have been determined to be patentable over each other.

Furthermore, it follows that, should prior art be found that anticipates the invention of one of the species, the invention of the other species would be patentable over such art because the determination has been made in the Office Action that the inventions of the groups are separately patentable over one another. If this were not the case, then, the election of species would not be proper. Each invention of the different species must be novel and unobvious over one another. Otherwise, Applicant has the right to have all inventions, which are not novel and not unobvious over one another, examined in the same application.

Respectfully submitted,



Theodore J. Leitereg
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